

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE NOCO COMPANY,	)	
	)	
Plaintiff,	)	CASE NO: 1:22-cv-00216
v.	)	
	)	JUDGE: JAMES S. GWIN
YABER TECHNOLOGIES CO., LTD.,	)	
	)	
Defendant.	)	
	)	

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**PLAINTIFF’S MOTION FOR LEAVE TO SERVE BY ALTERNATIVE MEANS**

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Pursuant to Fed. R. Civ. P. 4(f)(3), Plaintiff the NOCO Company (“*NOCO*” or “*Plaintiff*”) respectfully requests that this Court grant Plaintiff leave to serve Defendant Yaber Technologies Co., Ltd. (“*Defendant*” or “*Yaber*”) via email at certain email addresses which it represents to the public as its own through both its webpages, [www.yaberauto.com](http://www.yaberauto.com) (support@yaberauto.com) and [www.yabertech.com](http://www.yabertech.com) (support@yabertech.com, sales@yabertech.com), as well as its filings before the USPTO. As outlined in the following Memorandum in Support and the Declaration of Anna E. Bullock, (“*Bullock Decl.*”), Exhibit 1, Plaintiff has diligently attempted to reach Defendant and effect service pursuant to Fed. R. Civ. P. 4(f)(1) and (f)(2); however, these attempts

were unsuccessful because NOCO, despite its diligent efforts, has been unable to locate Defendant's correct and current address. *Bullock Decl.*, (Ex. 1), ¶¶ 16-17.

Accordingly, Plaintiff respectfully requests leave to serve Defendant via email at email addresses Defendant utilizes on its websites for business inquiries and through the email addresses it lists as correspondence email addresses in filings before the USPTO. Email presents the best way to apprise the Defendant of the pending litigation; this method of service has been authorized by this District; and email service comports with the requirements of due process.

Respectfully Submitted,

**KOHRMAN JACKSON & KRANTZ LLP**

/s/ Anna E. Bullock

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## **MEMORANDUM IN SUPPORT**

### **I. Introduction**

Plaintiff has diligently attempted to contact Defendant with several requests to waive service pursuant to Fed. R. Civ. P. 4(f)(1) and (f)(2); however, these attempts were unsuccessful because NOCO, despite its diligent efforts, has been unable to locate Defendant's correct and current address. *Bullock Decl.*, (Ex. 1), ¶¶ 16-17. Plaintiff has also contacted Defendant through emails listed on its websites and in filings before the USPTO and has not received a response from Yaber or any of its authorized representatives. Plaintiff now requests that the Court permit it to effect service through email because it is reasonably calculated to apprise Defendant of the pending litigation and comports with the requirements of due process.

### **II. Plaintiff's Efforts to Identify Multiple Sources of Contact Information and Serve Defendant**

#### **1. Contact Information Obtained Through USPTO**

Yaber owns several U.S. trademarks associated with its batteries and battery chargers. Defendant's live mark for "Yaber," Registration No. 6529004, lists the following address as Defendant's address:

Bantian Guoji Center No. 5  
Bldg B, Rm 406 4/F  
Huancheng South Rd, Bantian St  
Longgang, Shenzhen China 518000

(the “*Guoji Center Address*”). A second live mark associated with Defendant, “YABER,” Registration No. 5500956, also lists the Guoji Center Address as Defendant’s address. Accordingly, a Waiver Package was sent to the Guoji Center Address via FedEx on March 23, 2022. *See* Exhibit 2, FedEx Receipts, at p. 1. The trademark search also yielded Attorney Haoyi Chen as the Defendant’s attorney of record. *See* Exhibit 3, TESS Search Results for “Yaber,” Registration No. 6529004. Plaintiff sent a digital emailed copy of the Waiver Package to Haoyi Chen at [haoyichen@archlakelaw.com](mailto:haoyichen@archlakelaw.com) on March 21, 2022. Exhibit 4, Email from Anna Bullock, Esq. to Haoyi Chen, Esq. (Mar. 21, 2022, 3:32 PM EST). Mr. Chen responded that he does not represent Defendant for purposes of this lawsuit. Exhibit 5, Email from Haoyi Chen, Esq. to Anna Bullock, Esq. (Mar. 23, 2022, 4:26 PM EST).

Defendant appears to own another mark, “YaberAuto,” Registration No. 6529004, which also lists Defendant’s address as the Guoji Center Address. This mark lists attorney Hao Ni as Defendant’s attorney of record. *See* Exhibit 3, TSDR Results for “Yaber,” YABERAUTO, Registration No. 6529004. Accordingly, Plaintiff sent Attorney Hao Ni a digital and physical waiver package requesting that he waive service on behalf of Defendant. *See* Exhibit 6, Email from Anna Bullock, Esq. to Hao Ni, Esq. (Mar. 21, 2022, 4:25 PM EST); Exhibit 2, FedEx Receipts, at p. 2. Mr. Ni responded that he does not represent Yaber. *See* Exhibit 7, email from Hao Ni, Esq. to Anna Bullock, Esq. (Mar. 23, 2022, 10:34 PM EST).

An assignment of the interest in the Defendant's trademark for "YABER," Registration No. 5500956 was recorded on December 31, 2020 to the following:

Wang, Yuanjing  
213-216, Bldg D, Qingnian Chuangye Park  
No. 18 Jianshe East Road, Longhua  
Shenzhen, 518109 China

Exhibit 8, TSDR Search Result for YABER, YABER Registration No. 5500956, (showing assignment history). Accordingly, Plaintiff sent a Waiver Package to this address on March 22, 2022. *See* Exhibit 2, FedEx Receipts, at p. 3. To date, Plaintiff has been unable to produce a response from any of the mailings to any physical address listed herein. Plaintiff believes Defendant has moved or is intentionally evading service efforts.

Defendant has listed several email addresses associated with its filings before the USPTO. Plaintiff collected the following email addresses from USPTO searches:

- TMProce@scienbizip.com
- ecptm@scienbizip.com
- 2244243173@qq.com

*See* Exhibit 9, USPTO TSDR TEAS Plus Application for "YABER," Registration No. 652900; Exhibit 10, TSDR Results for "YABER," Registration No. 5500956.

## **2. Contact Information Obtained Through Defendant's Website and Product Manuals**

Defendant is associated with two websites which list overlapping contact information. The first, yaberauto.com, lists Defendant's battery products for sale and

invite consumers to contact Defendant at: support@yaberauto.com and sales@yaberauto.com. Emailed copies of the Waiver Packages were sent to both email addresses on March 21, 2022. Exhibit 11, Screen capture of [www.yaberauto.com](http://www.yaberauto.com); Exhibit 12, Email from Anna Bullock, Esq. to Defendant's Known Email Addresses (Mar. 21, 2022, 3:50 PM EST).

Defendant's website [www.yabertech.com](http://www.yabertech.com) lists different products for sale: mainly projector equipment. There is an overlap in the contact information offered on this site as compared to the [www.yaberauto.com](http://www.yaberauto.com) site. The "Contact Us" section of that website lists the following email addresses: "For Website Orders: service@yabertech.com[:] For Amazon Orders: support01@yaberauto.com[: and] Wholesale business: sales@yabertech.com[:]" An emailed copy of the Waiver Package was sent to each of these email addresses on March 21, 2022. *See* Exhibit 12, Email from Anna Bullock, Esq. to Defendant's Known Email Addresses (Mar. 21, 2022, 3:50 PM EST). The "Contact Us" portion of the Defendant's website also lists the following address, slightly different from the Guoji Center Address:

4F Building B Bantian International Center,  
No. 5 South Road,  
Shenzhen CN

A Waiver Package was sent to this address on March 23, 2022. A FedEx receipt for the Waiver Package is included at Exhibit 2, FedEx Receipts, at p. 4.

Plaintiff also downloaded and searched several product manuals of Defendant's battery chargers for additional contact information associated with the Defendant. The various manuals all listed support@yaberauto.com as an email contact of Defendant. *See, e.g.,* Exhibit 13, Battery Jump Starter User Manual for the YR100, at p. 1. Accordingly, an emailed copy of the Waiver Package documents was sent to Defendant at this email address on March 21, 2022. *See* Exhibit 12, Email from Anna E. Bullock, Esq. to sales@yabertech.com; support01@yaberauto.com; support.01@yaberauto.com; service@yabertech.com; tmproce@scienbizip.com; ecptm@scienbizip.com; 2244243173@qq.com; and support@yaberauto.com (Mar. 21, 2022, 3:50 PM EST). With the exception of support.01@yaberauto.com, each of the emails were successfully sent and did not bounce back nor were rejected in any way. *See Bullock Decl.*, (Ex. 1), ¶¶ 20-21.

### III. Law and Argument

Plaintiff requests the opportunity to effect service through email because such method is reasonably calculated to notify Defendant of this lawsuit and is permitted under Fed. R. Civ. P. 4(f)(3). Ohio federal courts have ordered that service via electronic means is appropriate where (i) the method is not prohibited by international agreement and (ii) such service comports with due process. *See, e.g., Medical Protective Co. v. Ctr. For Advanced Spine Techs.*, No. 1:14-cv-005, 2014 U.S. Dist. LEXIS 196753, at \*12 (S.D. Ohio Jan. 13, 2014) (allowing plaintiff to serve defendant via email); *Noco Co. v. Shenzhen Dika Na'Er E-Commerce Co.*, No. 1:17-CV-2282, 2017 U.S. Dist. LEXIS 194396, at \*6 (N.D. Ohio Nov.

22, 2017) (allowing alternative service through Facebook Messenger and email). Here, NOCO fulfills both requirements.

First, the Hague Convention “does not apply ‘where the address of the person to be served is not known.’” *Noco Co. v. Zhejiang Quingyou Elec. Commerce Co.*, Case No. 1:20cv1170, 6 (N.D. Ohio Jan. 27, 2021), *citing* Hague Convention, Art. 1. Here, none of the waiver packages to Defendant have been successfully delivered. *See* FedEx Detailed Tracking Screen Captures, Exhibit 14, also available online at:

<https://www.fedex.com/fedextrack/?trknbr=791244575342&trkqual=2459660000~791244575342~FX> (last visited June 22, 2022);

<https://www.fedex.com/fedextrack/?trknbr=791244581094&trkqual=2459660000~791244581094~FX> (last visited June 22, 2022); and

<https://www.fedex.com/fedextrack/?trknbr=791245028615&trkqual=2459661000~791245028615~FX> (last visited June 22, 2022).

On March 21, 2022, NOCO emailed a scanned, digital copy of a complete package containing the waiver of service request to email addresses listed on the trademark application that Defendant filed with the USPTO for “YABER” Registration No. 652900, which are: [TMPProce@scienbizip.com](mailto:TMPProce@scienbizip.com); and [ecptm@scienbizip.com](mailto:ecptm@scienbizip.com). *See* Exhibit 9, TEAS Plus Application for “YABER” Registration No. 652900; Exhibit 12, Email from Anna Bullock, Esq. to Defendant’s Known Email Addresses (Mar. 21, 2022, 3:50 PM EST).



On March 21, 2022, NOCO emailed a scanned, digital copy of a complete package containing the waiver of service request to email addresses listed on the trademark documents Defendant filed with the USPTO for “YABER” Registration No. 5500956, which is: 2244243173@qq.com. *See* Exhibit 10, TSDR Search Result for “YABER” Registration No. 5500956; Exhibit 12, Email from Anna Bullock, Esq. to Defendant’s Known Email Addresses (Mar. 21, 2022, 3:50 PM EST).

Email service may be the best method to apprise a defendant of pending litigation, and “[c]ourts have repeatedly found that email service is not prohibited by the Hague Convention.” *Medical Protective Co.*, 2014 U.S. Dist. LEXIS 196753, at \*12 (citing *Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, 291 F.R.D. 172, 174–75 (S.D. Ohio Jan. 13, 2014)). Here, NOCO requests leave to use email to serve Defendant—a method not prohibited by international agreement and authorized in this district. *See id.*

Second, it is within this Court’s discretion to order an alternative method of service that comports with constitutional due process requirements. *See Lexmark Int’l, Inc.*, 291 F.R.D. at 174 (citing *Madu, Edozie & Madu, P.C. v. SocketWorks Ltd., Nig.*, 265 F.R.D. 106, 115 (S.D.N.Y. 2010)); *see also Tillotson Corp. v. Supermax Corp. Bhd.*, No. 4:07-CV-0193, 2008 U.S. Dist. LEXIS 129977, \*9–10 (N.D. Ga. May 21, 2008). To comport with due process requirements, a method of service must be “reasonably calculated” to notify interested parties of the lawsuit and allow them an opportunity to respond or object. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This district has found that using

electronic means to serve an e-commerce merchant, such as Defendant, is “likely to be the most effective way to apprise” a defendant of a lawsuit. *See NOCO Co. v. Khaustov*, No. 1:19-CV-196, 2019 U.S. Dist. LEXIS 151413, at \*7–8 (N.D. Ohio Sept. 5, 2019) (finding that email service is “likely to be the most effective way to apprise” an Amazon seller of a lawsuit).

Here, NOCO has contacted Defendant through email. *See* Exhibit 12, Email to Defendant’s Known Email Addresses. NOCO’s emails to Defendant did not bounce back, and were not marked undeliverable, nor rejected in any way. *See Bullock Decl.*, (Ex. 1), ¶ 21. Because electronic correspondence may be the most effective means to contact an e-commerce defendant (*See Khaustov*, 2019 U.S. Dist. LEXIS 151413, at \*7–8), service via email is “reasonably calculated” to apprise Defendant of the litigation and comports with due process requirements.)

Respectfully submitted,

**KOHRMAN JACKSON & KRANTZ LLP**

/s/ Anna E. Bullock

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Email: jjp@kjk.com; dph@kjk.com;

amw@kjk.com; aeb@kjk.com

*Counsel for Plaintiff, The NOCO Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via Air Mail upon Defendant on June 30, 2022 at:

Yaber Technologies Co., Ltd.  
Bantian Guoji Center No. 5  
Bldg B, Rm 406 4/F  
Huancheng South Rd, Bantian St  
Longgang, Shenzhen China 518000

Respectfully submitted,

**KOHRMAN JACKSON & KRANTZ LLP**

/s/ Anna E. Bullock

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